IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 370 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
GIRISHKUMAR LAXMISHANKAR @ NANUBHAI TRIVEDI & 3 - Opponent(s)

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Appearance :
MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 02/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal dated 6-12-2004 rendered by the Additional Sessions Judge, Dhragandhra in Sessions Case No. 15 of 2004 acquitting the respondents accused for the offences punishable u/ss 306, 498-A and 114 of the I.P. Code.

2. In brief, the prosecution case was that deceased Chetnaben was the daughter of complainant Babulal Parshotamdas Raval and was was married to accused No.1 Girishkumar Laxmishanker @ Nanubhai Trivedi of village Patdi before about 8 to 9 months of the incident. Accused No. 2 Sharmisthaben wd/o Laxmishanker @ Nanubhai Oghadram was the mother-in-law, accused No. 3 Kailasben Pravinkumar Mehta was sister-in-law and accused No. 4 Geetaben Dineshkumar Makwana was the neighbour of deceased Chetnaben. After marriage when Chetnaben came to her matrimonial house she told the complainant that the accused were inflicting mental and physical cruelty to her in respect of house-hold work. Before about four months of the accident, accused Girishskumar Laxmishanker @

Nanubhai Trivedi, accused Kailasben, accused Geetaben and other three persons came to leave Chetnaben to the complainant's house and informed that there was a dispute between Chetnaben and her mother-in-law Sharmisthaben. But Chetnaben refused to stay at the complainant's house. Therefore, accused took Chetnaben to Patan Police Station. The complainant and his wife were called at the police station. But no complaint was lodged by any one and Chetnaben was persuaded and therefore she stayed at the house of the complainant for a day and thereafter went to her matrimonial house alone as accused Girishkumar did not come to take Chetnaben. Thereafter about two months accused Girishkumar, accused Geetaben and others came to the house of the complainant to leave Chetnaben and a writing was written by them on stamp paper to the effect that if anything happens to Chetnaben they (accused) will not be responsible and asked the complainant to sign the same but the complainant refused to sign the said writing and asked the accused to take Chetnaben with them but they did not take her with them so Chetnaben stayed at complainant's house for about 10 days and

thereafter returned to her matrimonial house. Before about a week of the incident, Chetnaben came to the house of the complainant and told him that she had come to take old Television set and after taking Television set she returned to her matrimonial house. On 12-2-2004 at about 20-00 hours. Chetnaben sustained burn injuries at her matrimonial house and was taken to Community Health Centre (CHC) at Patdi for treatment and the incident was reported to Patdi Police Station. The police station recorded the incident as “Janva Jog” Entry No.5 of 2004 at 20-45 hours and preliminary investigation was started. A 'Yadi” was sent to Executive Magistrate to record dying declaration of Chetnaben and dying declaration was recorded. As Chetnaben had burns all over her body she was referred to V.S. Hospital, Ahmedabad. Chetnaben succumbed to her injuries on 20-2-2004 and death was recorded as Accidental Death No.4 of 2004 by Patdi Police Station under Section 174 of the Code of Criminal Procedure, 1973. The dead body of Chetnaben was sent for postmortem after drawing inquest panchnama. Thereafter, Babulal Parshotamdas Raval, the father of deceased Chetnaben

lodged compliant before Patdi Police Station on 3-3-2004 for the offences punishable u/s 498-A, 306 and 114 of the I.P. Code against the accused and it was registered as I - CR No.13 of 2004 and investigation was started. During the course of investigation, statement of the witnesses were recorded and the accused were arrested. .

3. On completion of investigation, charge sheet was laid before learned J.M.F.C., Patdi for the offence punishable u/ss 498-A, 306 and 114 of the I.P. Code. As the offence was exclusively triable by the Sessions Court, the case was committed to the Sessions Court, Dhrangadhra and it was registered as Sessions Case No. 15 of 2004. The learned Addl. Sessions Judge, Dhragandhra framed charge at Exh. 9 against the accused for the offences punishable u/ss 498-A, 306 and 114 of the I.P. Code. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution led evidence to prove the charge. On completion of recording of evidence, the leaned trial Judge explained to the accused the incriminating

circumstances appearing in the evidence against them. The accused explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure and denied having committed the offence and also filed written statement. It is stated by the accused that deceased Chetnaben sustained accidental burn injuries while preparing meal in the evening of 12-2-2004; that deceased Chetnaben in her dying declaration before the Executive Magistrate and the police stated that it was an accident. It is further explained that they never inflicted physical or mental cruelty to deceased Chetnaben nor have they demanded any dowry. It is explained that accused Kailasben is married and resides at Nana Goriya village; that she was not at village on the day of the incident and accused Geetaben is innocent.

4. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that the prosecution has failed to prove the charge levelled against the accused. Therefore,the trial Court acquitted the accused for the offences charged

against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal with a prayer to grant leave to appeal.

5. We have heard the learned A.P.P. for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the case.

6. It is worth to record that deceased Chetnaben had sustained burn injuries at about 8-00 p.m. on 12-2-2004 and immediately thereafter she was taken to Community Health Centre, Patdi for treatment at 8-15 p.m.. The Medical Officer of Community Health Centre Patdi recorded history of injuries sustained by Chetnaben wherein it was recorded that burn injuries were caused on account of flame while filling kerosene. The evidence indicates that the incident was recorded as “janva jog” entry in Patdi Police Station. Thereafter, dying declaration of Chetnaben was recorded by the Executive Magistrate. Thereafter she was referred to V.S. Hospital, Ahmedabad and during the treatment Chetnaben died on 20-2-2004 and death was recorded as

Accidental Death No. 4 of 2004 in Patdi Police Station. Thereafter, on the basis of the complaint, offence was registered and on completion of investigation charge sheet was filed against the respondents accused.

7. As observed earlier, the victim was taken to Community Health Centre, (C.H.C.) Patdi for treatment immediately after the incident and history of injuries was recorded by the Medical Officer. The prosecution produced medical certificate at Exh. 35 given by Medical Officer, Community Health Centre, Patdi. It indicates that Chetnaben was brought to the hospital at 8-15 p.m. and she was conscious. The certificate also indicates that she had given history of her injuries and the victim stated that she had sustained burn injuries on account of flame while filling kerosene. It can be seen from this evidence that at the first opportunity the victim gave history of her burn injuries. The victim did not implicate the accused in the burn injuries sustained by her. There is no reason to disbelieve this evidence.

8. It appears from the record that Chetnaben

after her admission in the hospital gave a statement to the police regarding the incident. It is signed by the deceased. In view of the fact that Chetnaben died after giving the statement it can be treated as dying declaration and would be the first information with regard to incident. The prosecution produced statement at Exh. 42. It states that Chetnaben was preparing meal on 12-2-2004 at about 8-00 p.m. on primus and kerosene container was lying near the primus; that the container fell on account of a push by Chetnaben and so she tried to take the container as kerosene may not spread more and while taking the container the flames caught her cloth and she started burning. The statement further states that the accused were not present in the house and people assembled as she shouted and the accused also came there and extinguished the fire by throwing quilt. This evidence indicates that Chetnaben had sustained burn injuries on account of accident and it was not a homicidal injuries.

9. The prosecution produced dying declaration recorded by the Executive

Magistrate – Mamltdar, Patdi at Exh.30 and also examined Mamlatdar P.W. 6 Harishbhai Jivabhai Rathod at Exh. 28. The witness deposed that on receipt of “Yadi” Exh.29, he went to C.H.C., Patdi to record dying declaration of Chetnaben and inquired from the Doctor whether the patient was conscious and as the Doctor informed him that the patient was conscious, he started recording dying declaration Exh. 30.

10. The “Yadi' written to the Executive Magistrate, Patdi to record dying declaration is produced at Exh.29. It bears an endorsement made by the doctor that the patient was conscious at 9-05 p.m. The Mamlatdar received the “Yadi” at 21-00 hours. The prosecution also produced dying declaration at Exh. 30. It indicates that the victim had sustained burn injuries while preparing meal and it was an accident. It also indicates that she had no quarrel with the accused and the accused were not responsible for the incident but it was an accident. The dying declaration is consistent with the history given by the deceased before the Medical Officer and statement recorded by the police at the

hospital. In view of this evidence, it becomes clear that Chetnaben had sustained burn injuries by accident while preparing meal and the accused were not responsible for the incident. The dying declaration given by Chetnaben before the Executive Magistrate and statement recorded by the police clearly indicate that no mental or physical cruelty was meted out to her by the accused as alleged by the prosecution.

11. The prosecution also produced a copy of 'Janva Jog' Entry No.5 of 2004 registered by Patdi Police Station, at Exh. 33. It indicates that Chetnaben was brought to the hospital for treatment as she sustained burns while preparing meal at the house. The entry was made at 20-30 hours on 12-2-2004 i.e. immediately after the incident. This evidence indicates that Chetnaben had sustained burn injuries on account of accident and it does not implicate the accused – respondents.

12. The prosecution also produced extract of station diary of Patdi Police Station, at Exh.34. It indicates that a “Janva Jog' entry was made with regard to the incident and a

'Yadi' was sent to the Executive Magistrate to record dying declaration of Chetnaben. In view of above, it becomes clear that deceased Chetnaben while giving history of her burn injuries in the hospital, in the statement recorded by Patdi Police Station and thereafter in the dying declaration before the Executive Magistrate, did not implicate the accused and deceased Chetnaben had sustained burn injuries on account of accident.

13. The prosecution examined P.W. 3 Dr. Savmil Premchandbhai at Exh. 20. The witness performed postmortem of dead body of Chetnaben. According to the witness, cause of death was shock as a result of burns and its complication.

14. The prosecution also produced postmortem report at Exh. 22. It indicates that the cause of death was shock as a result of burns and its complication. It does not indicate any external injuries on the dead body of Chetnaben.

15. Analysing the evidence of P.W. 3 Dr.

Savmil, postmortem report Exh. 22, in light of the dying declarations given by deceased Chetnaben, in our view, death of Chetnaben was accidental and not homicidal in nature.

16. The prosecution examined P.W. 1 Babulal Parshotamdas Raval at Exh. 15. The witness was the father of deceased Chetnaben and has reiterated the accusations made in the compliant Exh.16. According to the witness, deceased Chetnaben was meted out mental and physical cruelty by the accused – respondents. In the cross-examination, the witness admitted that since about 15 years he has renounced the world and is not residing with his family but resides at Ashram. The witness also deposed that deceased Chetnaben was married twice but she could not settle and her marriage with accused Girishkumar was third marriage. The witness also deposed that deceased Chetnaben remained in V.S. Hospital, Ahmedabad for 9 days and he was visiting her daily with his brother and wife. The witness also admitted that Chetnaben told her about her difficulties on the third of the incident but he did not file any compliant. The witness also deposed that there were occasions when

he, his wife and Chetnaben were alone in the room and funeral of Chetnaben took place in their presence. Scanning the evidence of this witness it clearly emerges that the witness was not residing with his family since last 15 years and had renounced the world. It also emerges that he visited Chetnaben in the hospital till she died and was informed about cruelty allegedly meted out to her, however no complaint was filed before the police. It also appears that after the death of Chetnaben on 20-2-2004 funeral took place in his presence however no complaint with regard to incident was filed. But strangely it was filed on 3-3-2004. The witness has not offered any explanation for such delay. Considering the dying declarations, in our view, oral deposition of this witness does not inspire confidence. Therefore, it cannot be relied upon to connect the respondents – accused with the offence.

17. The prosecution also produced compliant at Exh. 16. It was given on 3-3-2004. It is alleged in the complaint that deceased Chetnaben was meted out mental and physical

cruelty for house-hold work and for staying separately. It is also alleged that the accused were passing taunting remarks against deceased Chetnaben for house hold work and therefore she committed suicide. The complainant had sufficient opportunities to file complaint but strangely no complaint, was filed in respect of alleged cruelty meted out to the deceased. As against that the deceased had in her dying declarations clearly stated that she was not meted out any cruelty and she had burns by accident. Therefore, in our view, the complaint is filed only with a view to achieve ulterior motive and therefore it cannot be relied upon.

18. The prosecution also examined P.W. 4 Sitaben Babulal Raval at Exh. 24. The witness was the mother of deceased Chetnaben. The witness has turned hostile and did not support the prosecution case. The witness was confronted with her police statement. The witness has denied having stated before the police that cruelty was meted out to the deceased by the accused.

19. The prosecution also examined panch P.W. 5 Narubha Manubha Jhala at Exh.25 and also produced panchanama of scene of offence at Exh. 26. This evidence does not involve the respondents – accused in the offence.

20. The prosecution examined P.W. 8 Vinodbhai Babulal Exh.37. The witness was the brother of deceased but he turned hostile and did not support the prosecution case. The witness was confronted with the police statement but he denied having stated before police that the deceased was meted out cruelty.

21. The prosecution examined P.W. 9 Vanrajsinh Juvansinh at Exh.38. The witness conducted part of investigation in respect of incident reported as Accidental Death NO.4 of 2004. The witness admitted that before recording the complaint, he had recorded statement of two witnesses but no offence was disclosed from the statements recorded by him. The witness admitted that he had read the papers of Accidental Death wherein statement of deceased was recorded on 12-2-2004 that she sustained accidental burns while preparing meal.

22. The prosecution also examined Investigating Officer P.W. 10 Vitthalrao Khandu Sonvane at Exh. 39. The contradictions in the statement of the witnesses were proved through this witness. The witness also produced the statement of Chetnaben at Exh. 42, wherein she stated that she had sustained burn injuries by accident.

23. In view of above, except the deposition of P.W. 1 Babulal Parshotamdas Raval Exh.15, there is no other evidence to indicate that the accused respondents were responsible for the death of Chetnaben. Even on analysing the deposition of P.W. 1 Babulal, it does not inspire confidence as the witness lodged the complaint after about 20 days of the incident. The statement of deceased Chetnaben recorded by the police and the dying declaration recorded by the Executive Magistrate do not implicate the accused – respondents in the offence. On the contrary, they indicate that deceased had sustained burn injuries on account of accident. Likewise, history of the injuries given by deceased Chetnaben to the doctor also

indicates that she had sustained burn injuries by accident. Therefore, it appears that the deceased sustained burns on account of accident and the respondents – accused were not involved in the incident.

24. In view of above, the learned trial Judge was justified in recording acquittal of the respondents accused for the offence charged against them. Therefore, no interference is warranted in the impugned judgment. Accordingly, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/